

ORDINANCE NO. 8847 (NEW SERIES)

AN ORDINANCE AMENDING ORDINANCE NO. 7415 (NEW SERIES)
AN ORDINANCE IMPOSING INTERIM REGULATIONS ON GRADING
AND CLEARING

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Subsections 7 and 8 are hereby added to Section 2(a) of Ordinance No. 7415 (N.S.) to read as follows:

(7) "Biological Mitigation Ordinance" shall mean that Ordinance adopted by the Board of Supervisors to implement the Multiple Species Conservation Plan for the County of San Diego.

(8) "Multiple Species Conservation Plan" shall mean the comprehensive habitat conservation-planning program which addresses multiple species habitat needs and the preservation of native vegetation for an approximate 900-square mile area in southwestern San Diego County, California, adopted by the Board of Supervisors on October 22, 1997.

Section 2. Section 2(k) is hereby amended as follows:

The following are exempt from the provisions of this Ordinance, except that clearing of any area within the boundaries of the Multiple Species Conservation Program Subarea Plan, adopted by the Board of Supervisors on October 22, 1997, shown on the map attached as Exhibit A, shall be regulated according to the requirements of the Biological Mitigation Ordinance:

Section 3. Effective Date. This Ordinance shall take effect and be in force 30 days after the date of its passage, and before the expiration of 15 days after its passage, a summary shall be published once with the names of the members voting for and against the same in the San Diego Daily Transcript, a newspaper of general circulation published in the County of San Diego. This ordinance shall become operative on the date that the County of San Diego receives its a permit from the United States Fish and Wildlife Service pursuant to Section 10(a) of the Federal Endangered Species Act, and its incidental take authorization and NCCP approval from the California Department of Fish and Game.

ORDINANCE NO. 7415 (NEW SERIES)

AN ORDINANCE IMPOSING REGULATIONS
ON GRADING AND CLEARING

AS AMENDED BY ORDINANCE NO. 7460 (NEW SERIES)
ADOPTED BY THE BOARD OF SUPERVISORS MARCH 23, 1988
(AMENDED VERSION EFFECTIVE APRIL 22, 1988)
AS AMENDED BY ORDINANCE NO. 9329 (NEW SERIES)
ADOPTED BY THE BOARD OF SUPERVISORS MAY 2, 2001

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds that:

(a) Uncontrolled grading and clearing (including brushing and grubbing) is of particular concern in San Diego County because of the very large number of threatened and endangered species and habitats, areas of high aesthetic concern, and the high erodibility of local soils.

(b) Clearing and illegal grading have been used to destroy environmental resources prior to application for a land development permit, during the permit process, after project approval but prior to the application of protecting open space easements, and after dedication of open space.

(c) Grading violations, when reported, result in relatively minimal fines and, because of the difficulty in obtaining convictions, are not a serious deterrent to illegal grading. A fine often will not prevent a violation of this ordinance because a fine may be considered simply as an additional development cost. Therefore, a penalty, other than a fine, is necessary to induce continued and consistent compliance with the ordinance and to prevent violations of the ordinance.

(d) Clearing for legitimate reasons (geotechnical, exploration and access for percolation tests and wells, and clearing for fire protection) is frequently done well in excess of the minimum necessary to accomplish the purpose.

(e) The Board of Supervisors determines that the regulations set forth in this ordinance will provide the necessary protection of the County's environmental resources.

Section 2. Notwithstanding any provision contained in The County Code of Regulatory Ordinances, The Zoning Ordinance or the County General Plan to the contrary, the following interim regulations are herewith adopted:

(a) For the purpose of this Ordinance the following definitions apply:

(1) "Grading" refers to any excavation or filling or combination thereof and shall include the land in its excavated or filled condition.

(2) "Clearing" refers to the removal of natural vegetation by any means, including brushing and grubbing.

(3) "Floodplain" refers to any 100-year floodplain delineated on maps used by the Department of Public Works, Division of Flood Control, or any other area subject to inundation in a 100-year flood.

(4) "Administrative permit" refers to an administrative permit issued by the Director, Department of Planning and Land Use.

(5) "Biological Mitigation Ordinance" shall mean that Ordinance adopted by the Board of Supervisors to implement the Multiple Species Conservation Plan for the County of San Diego.

(6) "Multiple Species Conservation Plan" shall mean the comprehensive habitat conservation-planning program which addresses multiple species habitat needs and the preservation of native vegetation for an approximate 900-square mile area in southwestern San Diego County, California, adopted by the Board of Supervisors on October 22, 1997.

(b) Unless exempt from the provisions of this Ordinance or granted a waiver from the administrative permit requirements, all grading and clearing shall be done only after issuance of one of the following, as may be applicable:

(1) a grading permit by the Department of Public Works pursuant to Title 8, Division 7 of the County Code of Regulatory Ordinances,

(2) a grading permit by the Department of Planning and Land Use pursuant to Section 87.210 of the County Code of Regulatory Ordinances,

(3) an administrative permit by the Department of Planning and Land Use pursuant to this Ordinance.

(c) All grading and clearing shall conform to the conditions of the authorizing permit, the waiver, or the exemption.

(d) Clearing of vegetation done in preparation for land development shall not be undertaken until both of the following have occurred:

(1) all discretionary approvals for the land development have been issued, and

(2) the appropriate permit listed in subsection (2)(b) of this Ordinance has been issued.

(e) Any grading or clearing which is done in violation of subsections (2)(b), (2)(c) or (2)(d) of this Ordinance shall be a misdemeanor punishable by a one thousand dollar (\$1,000) fine. Each day or any portion of a day that any person violates or continues to violate this Ordinance constitutes a separate offense and may be charged and punished separately without awaiting conviction on any prior offense. The penalties imposed by this subsection are in addition to penalties imposed under the County Code of Regulatory Ordinances and The Zoning Ordinance.

(f) Any grading or clearing which according to a field inspection of the property was done in violation of subsections (2)(b), (2)(c) or (2)(d) of this Ordinance shall be grounds for denying for five years all applications for grading permits, Administrative Permits, Site Plans, Use Permits, Major and Minor Subdivisions, Rezones, Specific Plans, Specific Plan Amendments, and General Plan Amendments proposed for the property on which the violation occurred. The five-year period shall commence from the date of the violation, if documented, or from the date of discovery of the violation.

(1) Upon evidence that mitigation measures have been taken to rehabilitate the site or that other appropriate measures have been taken to mitigate the adverse effects of the illegal grading or clearing, the Board of Supervisors may waive the penalty imposed by this subsection.

(g) Administrative Permit required.

Clearing activities, and Grading activities which are not subject to subsection (2) (b) (1) or (2) (b) (2), shall require the issuance of an administrative permit.

(h) Procedure for Administrative Permit required by subsection (g). The following procedure shall be followed to process an Administrative Permit required by subsection (g):

(1) Applicant submits application to the Department of Planning and Land Use on form prescribed by that Department.

(2) Department of Planning and Land Use reviews application for potential adverse environmental impacts.

(3) Where appropriate, staff of the Department of Planning and Land Use suggests to applicant changes which would make proposed activity acceptable.

(4) The Director of Planning and Land Use shall determine whether to issue, conditionally issue, or deny the administrative permit. The Director shall not issue or conditionally issue the administrative permit unless he or she first finds that the clearing authorized by the permit will comply with all requirements of Chapter 8 (commencing with Section 67.801) of Division 7 of Title 6 of the San Diego County Code.

(i) Fee. A fee of fifty dollars (\$50) shall be charged for processing an Administrative Permit required by this Ordinance.

(j) The following activities are exempt from the provisions of this Ordinance, if they occur on land located outside the boundaries of the Multiple Species Conservation Program Subarea Plan, as shown on the map attached as Attachment A to the Biological Mitigation Ordinance.

(1) Clearing of up to a maximum of five acres, on a parcel zoned for single-family residential use and improved with a single-family residence. The amount of land cleared under this exemption shall not exceed a total of five acres, regardless of the number of occasions on which clearing is performed.

(2) Routine landscaping, maintenance, and the removal of dead or diseased trees or shrubs.

(3) Clearing for fire protection purposes within 100 feet of a dwelling unit. Any additional clearing for fire prevention, control or suppression purposes is exempt when authorized or required, in writing, by a fire prevention or suppression agency.

(4) Limited clearing as necessary for the purpose of surveying, geotechnical exploration and access for percolation tests and wells. This exemption does not include clearing for building pads or leach fields.

(5) Clearing, and minor grading which does not require a grading permit, either of which are incidental to the repair, alteration or construction of a single-family dwelling and accessory buildings and structures pursuant to an approved building permit.

(~~7~~6) Clearing, and minor grading which does not require a grading permit, either of which conform to the location, extent and purpose authorized,

explicitly or implicitly, by an approved plot plan pursuant to a discretionary land use permit or a discretionary development permit.

(7) Clearing incidental to grading activities which are exempt from a grading permit requirement pursuant to County Code of Regulatory Ordinances Sections 87.201(c), (d), (e), (g), (h), and (i).

(8) Tilling or cultivating land exclusively for purposes of growing agricultural plants or animals, provided that the tilling or cultivating will not block or divert any natural drainage way, and the land to be tilled or cultivated has been in agricultural production for at least one of the preceding five years. This exemption does not allow the establishment of new agricultural operations on, or the expansion of existing agricultural operations onto, any area which has not been in agricultural production for at least one of the preceding five years.

(k) Clearing of land located within the boundaries of the Multiple Species Conservation Program Subarea Plan, as shown on the map attached as Exhibit A to the Biological Mitigation Ordinance (Ordinance No. 8845 (N.S.)), shall be exempt from the provisions of this Ordinance if the proposed clearing is exempt from the Biological Mitigation Ordinance pursuant to its terms.

(10) Limited clearing to provide access to property to perform activities that would otherwise be exempt from the provisions of this Ordinance.

Section 3. In the event that any grading or clearing is commenced or done contrary to the provisions of this Ordinance, the Director of Public Works or the Director of Planning and Land Use, as appropriate, may cause to be recorded with the County Recorder a notice of grading or clearing violation for the property. The Director of Public Works or the Director of Planning and Land Use, as appropriate, shall cause the notice of grading or clearing violation to be removed when he or she determines that the violation no longer exists.

Section 4. A decision by a County official that a violation of this Ordinance has occurred may be appealed pursuant to Zoning Ordinance Sections 7200-7206.

COUNTY CODE OF REGULATORY ORDINANCES SECTIONS 87.201(c),
(d), (e), (g), (h) AND (i) AS REFERENCED IN
ORDINANCES 7415 (NEW SERIES) AND 7460 (NEW SERIES)
AN ORDINANCE IMPOSING INTERIM REGULATIONS ON GRADING AND
CLEARING

Sec. 87.201. PERMIT REQUIRED – EXCEPTIONS. No person shall do any grading without first having obtained a grading permit from the Director of Transportation, except for the following:

(c) An excavation below finished grade for basements and footings of a building, retaining wall, swimming pool, septic tank, and leaching system, or other structure authorized by a valid building permit. This paragraph shall not exempt from the permit requirements any fill made with the material from such excavation having an unsupported height greater than five feet (5') after the completion of such structure.

(d) Refuse disposal areas or sanitary fills operated and conducted in accordance with a Special Use Permit issued pursuant to The Zoning Ordinance or a permit issued pursuant to Article 2, Chapter 5, Division 8, Title 6, of this Code or as a lawful nonconforming use and where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property.

(e) Grading upon property under the control of the United States of America, State of California, or the County of San Diego, when done by such government or agency, or when done by their contractor if the work is to be administered and inspected by an engineer employed by such government or agency.

(g) Grading incidental to the construction or installation of underground pipelines, conduits or similar underground facilities by public utility corporations, municipal corporations or special districts or their contractors.

(h) Grading incidental to the construction or installation of drainage or flood control works pursuant to a Watercourse Permit issued by the Department of Sanitation and Flood Control.

(i) Grading or reclamation work pursuant to a Special Use Permit or reclamation plan for a borrow pit, quarry or other surface mining operation approved by the Planning Commission or Board of Supervisors; provided, however, that a borrow pit which is to complete within one year from commencement, the removal of material to be used exclusively for fill at another approved site or sites shall be required to secure a grading permit for the excavation site as well as the fill sites.

AUTHOR\RPORDCM1-1201-CLEAN;br